

NOTICE

This is a summary disposition issued under Alaska Appellate Rule 214(a). Summary dispositions of this Court do not create legal precedent. See Alaska Appellate Rule 214(d).

IN THE COURT OF APPEALS OF THE STATE OF ALASKA

MATTHEW P. CAMPBELL,

Appellant,

v.

STATE OF ALASKA,

Appellee.

Court of Appeals No. A-13423
Trial Court No. 3KO-17-00310 CR

SUMMARY DISPOSITION

No. 0213 — September 15, 2021

Appeal from the Superior Court, Third Judicial District, Kodiak,
William Morse, Judge.

Appearances: George W.P. Madeira Jr., Assistant Public
Defender, and Samantha Cherot, Public Defender, Anchorage,
for the Appellant. Madison M. Mitchell, Assistant Attorney
General, Office of Criminal Appeals, Anchorage, and Treg R.
Taylor, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, and Wollenberg and Harbison,
Judges.

Matthew P. Campbell was convicted, following a jury trial, of one count
of third-degree assault,¹ two counts of fourth-degree assault,² one count of disorderly

¹ AS 11.41.220(a)(1)(B).

² AS 11.41.230(a)(1).

conduct,³ and one count of fifth-degree criminal mischief⁴ based on an incident in which Campbell assaulted Mary Katelnikoff, the mother of his child, and caused damage to a door. Campbell appeals his convictions, arguing that the trial court erred when it denied his request for a continuance to speak with a witness who later testified at trial.

The witness at issue testified about evidence — an apology note from Campbell to Katelnikoff — that was not discovered until the middle of trial. Katelnikoff gave the prosecutor the note only after both she and Campbell had testified, and the prosecutor immediately gave a copy to the defense attorney.

According to Katelnikoff, a friend delivered the note to her after Campbell was arrested. In the note, which was undated, Campbell apologized for an unidentified incident, and he claimed to have no memory of what had happened. This claim was consistent with Campbell's statements to the police but was inconsistent with his trial testimony, where he stated that he did recall the incident in question and that the physical altercation was not as extreme as Katelnikoff claimed. The note also contained a statement from Campbell directing Katelnikoff to throw the note away.

After providing a copy of the note to the defense attorney and the court, the prosecutor indicated that he intended to introduce the note into evidence. Campbell's attorney objected and requested a continuance to find the friend who had delivered the note to Katelnikoff because the defense attorney believed that the note did not relate to the incident at issue. This request for a continuance was granted.

The next day, Campbell's attorney indicated that he had located the friend who had delivered the note — a person named Kelly Moore. Moore was prepared to testify telephonically. The attorney also indicated that he had spoken to Moore the

³ AS 11.61.110(a)(6).

⁴ AS 11.46.486(a)(2).

previous night for about five minutes, but the attorney asked for an additional continuance so that he could have a longer conversation with Moore before calling Moore as a witness. The trial court denied this second request for a continuance, ruling that it was unnecessary because Moore was available to testify.

Moore subsequently testified that he had delivered various notes from Campbell to Katelnikoff during a time when Campbell was court-ordered not to have contact with Katelnikoff. Moore did not recall exactly when this specific note was delivered because he never read any of the notes. He thought that he might have delivered it in April (earlier than the incident at issue) because that was when he planted potatoes. On cross-examination, however, Moore acknowledged that he may have delivered the note in August (when the incident occurred).

In closing argument, the prosecutor briefly referenced the note and argued that it was related to the incident at issue. The jury subsequently acquitted Campbell of one count of second-degree assault and one count of attempted second-degree assault, but convicted him of third-degree assault, two counts of fourth-degree assault, one count of disorderly conduct, and one count of fifth-degree criminal mischief.

On appeal, Campbell argues that his convictions should be reversed because the trial court erred in denying his request for a second continuance to further prepare the witness.

Whether to grant a continuance rests in the sound discretion of the trial court,⁵ and we find no abuse of discretion here. The record shows that Campbell was given adequate time to locate Moore and that Campbell's attorney had an opportunity to speak with Moore before he testified. The record also shows that Campbell was given adequate opportunity to fully question Moore at trial and to refresh Moore's recollection

⁵ *Nielsen v. State*, 623 P.2d 304, 307 (Alaska 1981).

during his testimony. Under these circumstances, we find no merit to Campbell's claim of error on appeal.

The judgment of the superior court is AFFIRMED.